

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF MASSACHUSETTS

3 No. 1:08-cr-10309-MLW-1

4
5 UNITED STATES OF AMERICA

6
7 vs.

8 MICHELLE ROBINSON
9

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11 *****

12 For hearing before:
13 Chief Judge Mark L. Wolf

14
15 Plea Change and Sentencing Hearing
16

17 United States District Court
18 District of Massachusetts (Boston.)
19 One Courthouse Way
20 Boston, Massachusetts 02210
21 Friday, February 20, 2009

22 *****

23 REPORTER: RICHARD H. ROMANOW, RPR
24 Official Court Reporter
25 United States District Court
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1 P R O C E E D I N G S

2 (Begins, 2:30 p.m.)

3 THE CLERK: Criminal Matter 08-10309, United
4 States versus Michelle Robinson. The Court is in
5 session. You may be seated.

6 THE COURT: Good afternoon. Would counsel
7 please identify themselves for the Court and for the
8 record.

9 MR. DOWDEN: Good afternoon, your Honor.
10 James Dowden on behalf of the United States and I'm
11 joined today with Paul Levenson, also, with the United
12 States.

13 THE COURT: Mr. Dowden, you're going to have
14 to speak into the microphone and keep your voice up,
15 please.

16 MR. DOWDEN: Thank you, your Honor.

17 MR. SMITH: Good afternoon, your Honor. Mark
18 Smith for Michelle Robinson.

19 THE COURT: Since this is the first time I've
20 seen you, I'd like to try to assure that we have a clear
21 and common sense of where we are and where you hope to
22 go.

23 As I understand it, Miss Robinson was arrested on
24 August 13, 2008 and detained in Federal custody. At
25 some point she represented that she was indigent, that

1 she had no income or assets, and Mr. Smith was appointed
2 as Criminal Justice Act counsel to represent her.
3 Although it's not quite clear to me how it took until
4 August 1, 2008 for her to be charged, on that date she
5 was charged in a one-count information alleging that she
6 used threats in interstate commerce in violation of 18
7 United States Code, Section 875D, and there are
8 forfeiture allegations pursuant to the relevant
9 statutory provisions.

10 On October 29, 2008, the grand jury returned a
11 three-count indictment asserting the 875D charge that
12 was in the information and adding two related charges of
13 wire fraud in violation of Section 1343. The indictment
14 also has the forfeiture allegations in it.

15 On January 21, 2009, the defendant moved for the
16 preparation of a pre-plea presentence report. I was
17 informed that the parties had entered into a binding
18 plea agreement on January 9, that is, an agreement
19 pursuant to Rule 11(c)(1)(C). That's a kind of
20 agreement that I have to either accept and impose the
21 agreed-upon sentence or reject and give the defendant a
22 chance to withdraw her plea. The binding plea agreement
23 provides for 6 months in custody, which I was told would
24 expire on February 13, 2009. I was asked to conduct
25 this hearing before then.

1 The plea agreement would also require the
2 imposition of a 3-year term of supervised release with
3 the first 6 months in home detention. This can be
4 clarified in the course of the proceeding, but I assume
5 that that could be home detention on electronic
6 monitoring, if appropriate. In addition, it would
7 require, as a condition of supervised release, that Miss
8 Robinson not publicize the name of the victim of her
9 extortionate scheme.

10 The government, I was told, agreed with the
11 defendant that it was appropriate to proceed in this
12 fashion, so the day after the motion was filed on
13 January 22, I allowed it and I scheduled this hearing
14 for today, which appeared to be the earliest date that
15 Probation could prepare the presentence report and give
16 me and you a short period of time to study it intensely,
17 which I've done.

18 In my order, on January 22, I set a schedule for
19 the filing of any pretrial memos or other information
20 not in the presentence report, the contemplated filing
21 by February 6th. No filings were made and two days ago
22 I ordered that sentencing memos be filed, at least by
23 the government.

24 Today I ordered that the financial statement of
25 the plea agreement provided would be given to the

1 government to be filed with me under seal. I did that
2 because the defendant had not supplied a complete
3 financial statement to the Probation Office, rather she
4 referenced the fact that she would provide one to the
5 U.S. Attorney.

6 I wanted those filings so I could put myself in
7 the best position to make a properly-informed judgment
8 promptly, which is what you're asking me to do, and I
9 have studied everything very closely. The memos were
10 filed. The defendant objects to the calculation of the
11 presentence report.

12 The financial statement that I received this
13 morning from the government and some supplementary
14 information relating to the financial statement that was
15 given to Probation that the defendant filed, I put under
16 seal, because that's the type of information that
17 ordinarily comes in the presentence report and is
18 received under seal. I expect we're going to be
19 discussing it. I have questions rooted in the financial
20 statement reports. The discussion will occur in open
21 court.

22 But -- and in addition, I guess I should note,
23 that within the hour Probation provided me, and I hope
24 already to you, a memo reviewing and revising the
25 calculations, or the guideline range essentially,

1 getting at the range advocated by the parties, although
2 by a different route, a 27 to 33 month range instead of
3 a 33 to 41 month range.

4 But in terms of the background and where we are at
5 the moment, is that a reasonable and reliable summary or
6 is there something else I should have in mind?

7 MR. DOWDEN: Nothing else, your Honor, from
8 the Government.

9 MR. SMITH: We would agree with that summary,
10 your Honor.

11 THE COURT: Now, as I said, what I -- well,
12 actually I didn't say it. There's a threshold issue
13 that needs to be addressed.

14 I did order this expedited preparation of the
15 presentence report, but Rule 32(e)(2) requires the
16 disclosure of a presentence report to the defendant 35
17 days before sentencing unless the defendant waives the
18 minimum period. Rule 32(f)(1) requires objections be
19 filed 14 days after that and Rule 32(g) requires
20 disclosure of the report seven days before sentencing.
21 None of those things were done because the motion for
22 the pre-plea presentence report and the sentencing was
23 made less than 35 days before the requested sentencing
24 date.

25 So, Mr. Smith, I need to know whether Ms. Robinson

1 wants to waive those time periods and, if so, I'll ask
2 her a few questions. If you want to describe what all
3 of this means to her, why don't you take a minute or
4 two.

5 MR. SMITH: It will just take a minute, your
6 Honor.

7 THE COURT: Sure.

8 (Pause.)

9 MR. SMITH: Thank you, your Honor. I've
10 explained it to my client and she'll answer any
11 questions you have.

12 THE COURT: All right. Ms. Robinson, please
13 stand and be sworn.

14 (THE DEFENDANT, sworn.)

15 THE COURT: You may be seated.

16 (Is seated.)

17 THE COURT: Here, why don't you pull that
18 microphone up to try to assure that I can hear you.

19 Would you please state your true full name?

20 THE DEFENDANT: Michelle Shanae Robinson.

21 THE COURT: You're going to have to speak more
22 loudly.

23 THE DEFENDANT: Michelle Shanae Robinson.

24 THE COURT: Do you understand that you've just
25 taken an oath to answer the questions I'm going to ask

1 you truthfully?

2 THE DEFENDANT: Yes.

3 THE COURT: Do you know that -- with regard to
4 all the questions I'm going to ask you today, if you
5 give me a false answer, that could be a separate,
6 prosecutable criminal offense?

7 THE DEFENDANT: Yes.

8 THE COURT: Do you understand that if you're
9 confused by any of my questions or unsure about what an
10 honest and accurate answer would be, I'll give you a
11 chance to speak to Mr. Smith, so we can clear up any
12 confusion and you can give me a reliable response?

13 THE DEFENDANT: Yes.

14 THE COURT: All right. Do you understand that
15 I've been told that you want to plead guilty and have me
16 sentence you today to the sentence that you and the
17 government agree to in the plea agreement?

18 THE DEFENDANT: Yes.

19 THE COURT: And do you understand that, among
20 other things, that sentence calls for 6 months in jail
21 or prison that may be a time period you've already
22 served?

23 THE DEFENDANT: Yes.

24 THE COURT: Do you understand that under the
25 rules a presentence report had to be prepared before I

1 could sentence you?

2 THE DEFENDANT: Yes.

3 THE COURT: And do you understand that I was
4 asked to have that presentence report prepared even
5 before you pled guilty on about January 21st of this
6 year?

7 THE DEFENDANT: Yes.

8 THE COURT: Do you understand that under the
9 Federal Rules of Criminal Procedure ordinarily you have
10 a right to get that report 35 days before the sentencing
11 date and then there's a period of time for objections to
12 be made, for Probation to respond?

13 THE DEFENDANT: Yes.

14 THE COURT: And do you understand that you and
15 your attorney didn't get this report 35 days in advance,
16 you only got it a couple of days ago because that's when
17 it was prepared?

18 THE DEFENDANT: Yes.

19 THE COURT: And do you understand that usually
20 it takes about 12 weeks to go through the whole
21 presentence report process, but it was all done faster,
22 so if I'm persuaded to impose the sentence you and the
23 government agreed upon, you can get out sooner rather
24 than later?

25 THE DEFENDANT: Yes.

1 THE COURT: Have you talked with Mr. Smith
2 about whether you want to give up your right to have had
3 that presentence report 35 days in advance of the
4 sentencing?

5 THE DEFENDANT: Yes.

6 THE COURT: Are you fully satisfied with his
7 work as your lawyer in this case?

8 THE DEFENDANT: Yes.

9 THE COURT: And do you want to give up your
10 right to have that presentence report 30 days in advance
11 of the date I sentence you?

12 THE DEFENDANT: Yes.

13 THE COURT: Well, I find that Ms. Robinson is
14 competent, that she's acting knowingly and voluntarily,
15 that she's effectively represented, therefore I accept
16 her waiver under Rule 32(e)(2).

17 Now, before we move to some other things, I want
18 to see if I accurately understand the key features of
19 the binding plea agreement, since to some extent I have
20 to question the defendant about it.

21 Since it's a binding plea agreement, what I intend
22 to do is conduct a Rule 11 colloquy. At the end of that
23 I'll decide whether to accept the plea. I will,
24 however, defer a decision on accepting the plea
25 agreement until after we have essentially the sentencing

1 hearing, which will follow the Rule 11 colloquy, and in
2 that sentencing hearing, I will decide whether to accept
3 the plea agreement and impose the agreed-upon sentence
4 or reject it and give Miss Robinson an opportunity to
5 withdraw her guilty plea, if I previously accepted it.

6 Do the parties agree that that's an appropriate
7 way to proceed?

8 MR. DOWDEN: No objection from the Government,
9 your Honor.

10 MR. SMITH: No objection, your Honor.

11 THE COURT: Now, I do have some questions
12 about the plea agreement. The plea agreement calls upon
13 me to dismiss Count 1, which is the alleged threat in
14 violation of Section 875(d).

15 What's the reason for dismissing Count 1?

16 MR. DOWDEN: Your Honor, as we've outlined in
17 our sentencing memo with the Court, the Government
18 believed the totality of its recommended sentence,
19 including its provisions of supervised release --

20 THE COURT: You're going to have to speak more
21 --

22 MR. DOWDEN: Including its provisions of
23 supervised release, its period of incarceration, the
24 restitution, and the other provisions provide, in
25 totality, a reasonable sentence. In coming to that

1 reasonable sentence, the parties engaged in
2 negotiations, plea negotiations, and as part of those
3 negotiations, the Government agreed to dismiss Count 1
4 and pursue Counts 2 and 3.

5 THE COURT: Did you think that that had some
6 impact on the guideline range?

7 MR. DOWDEN: Your Honor, it certainly -- the
8 Government does not -- does not believe that the wire
9 fraud charges would have been different had it not
10 dismissed Count 1 of the indictment.

11 THE COURT: But if Count 1 was in the
12 indictment, would the guidelines be higher?

13 MR. DOWDEN: No, your Honor, the Government
14 does not believe as such. And, also, the Government
15 believes that the wire fraud charges encapsulate the
16 core of the conduct found in Count 1, and that is part
17 of the reason why the Government agreed to dismiss Count
18 1. It's part of the fraudulent scheme alleged in the
19 wire fraud counts, your Honor. It was a scheme to
20 defraud by injuring the reputation of the addressee by
21 fraudulent misrepresentations.

22 THE COURT: Because this is going so fast and
23 I'm trying to accommodate you, it's actually my sense
24 that if Count 1 -- and it may not be probation. If
25 Count 1 remained in, it might be appropriate -- it would

1 be appropriate to use the higher loss amount, the 580
2 instead of the 280, which would have raised the
3 guideline range from 33 to 41. But it's my present
4 sense, also, that that's not material. It's an
5 overlapping range, 33 months is in that range, and the
6 departure or variance you're advocating is either going
7 to be reasonable under either of those ranges or not
8 reasonable, but the precise calculation is not material.

9 MR. DOWDEN: Yes, your Honor, I agree with
10 that. And as part of the parties plea agreement, there
11 was an agreement of the calculation of the guideline
12 sentence, and although probation has disagreed with it
13 on two occasions, I think they do now agree that
14 ultimately the calculation that -- that the range is the
15 same to get to the --

16 THE COURT: Well, they agree that the range
17 for Counts 2 and 3 is as you calculated. They may get
18 to it by a different route. But I think the range might
19 be higher if Count 1 were still in.

20 MR. DOWDEN: I agree, your Honor. I do agree.

21 THE COURT: Okay. And then, as I said in the
22 order that I issued yesterday, as a condition of
23 supervised release, I'm being asked to order that Miss
24 Robinson not publicize the identity of the victim. And
25 I don't issue orders I don't expect to be obeyed. And I

1 don't issue orders that I think are ambiguous and might
2 arguably be reasonably misunderstood. And to me, the
3 term "publicized," without some explanation or
4 clarification may be ambiguous.

5 As I said in the order that I issued yesterday, I
6 assume that I'm -- if I accept this agreement, that I am
7 to order Miss Robinson not to disclose the identity of
8 the victim in the future to anybody, except her attorney
9 and somebody working with him, anybody working with him
10 in connection with this case. Is that what you
11 intended?

12 MR. DOWDEN: Your Honor, as to the definition
13 of the term "publicize" in your order, the Government
14 agrees with your definition of "publicize" in this
15 context, yes.

16 THE COURT: And, Mr. Smith, is that an
17 acceptable definition of "publicize" for the purpose of
18 this case?

19 MR. SMITH: Yes, it is, your Honor.

20 THE COURT: And then we'll discuss this
21 perhaps in more detail later. But I put you on notice
22 yesterday that I was thinking -- and I'm concerned about
23 what happens if the victim's name gets revealed to the
24 media. And I've ordered Miss Smith not to -- not Miss
25 Smith, Miss Robinson, not to disclose it.

1 There's a certain dynamic that I have some
2 familiarity with that usually ensues and the person
3 charged with the improper disclosure may well say,
4 "Well, a number of people knew this name and it wasn't
5 me who told the media." And the Attorney General
6 usually doesn't authorize the Justice Department to
7 subpoena a member of the media to find his or her
8 source, so we look for the source here in court.

9 It would be helpful, I think, to perhaps avert any
10 problems in the future, but to put the Court in a
11 position to resolve the issues quickly and fairly since,
12 if that issue comes up, it could result in Miss Robinson
13 going to prison for three years and then being on
14 supervised release again.

15 If I learn, under seal, and I may not even bother
16 to look at it, it wouldn't affect any decision I'm
17 making now, who has that information as of today. Does
18 the Government have a concern about my order? Will the
19 Government let me know about that.

20 MR. DOWDEN: Yes, your Honor. My colleague,
21 Mr. Levenson, is going to address that point.

22 THE COURT: Okay.

23 MR. LEVENSON: Your Honor, I think we start
24 from common ground, which is that the Court's suggestion
25 is a good idea, and indeed our office has undertaken to

1 determine who within the chain of approvals within our
2 office has been exposed to the name of the victim, to
3 memorialize that information, gather it together, and
4 also to -- also to undertake to gather also from law
5 enforcement agents who may also have been exposed to
6 that information.

7 I think, as a prudential matter, whether the All
8 Writs Act or other authority extends to that, where we
9 agree that it's a good idea and we are representing to
10 the Court that we are undertaking to gather it, I think
11 Step 1 is accomplished, and that the question of -- I
12 think it is -- to the extent that there's a closed
13 question about the Court's authority now, if there isn't
14 a violation, at that point it seems to me that the Court
15 is well situated to say, "All right, now turn it over."

16 So what I think makes sense in the short term
17 rather than in -- and I spent some time last night and
18 today trying to read up on the All Writs Act and I came
19 away with two senses. One, I'm not an authority on the
20 All Writs Act. Two, I'm not sure anybody is. It's
21 truly in uncharted waters.

22 THE COURT: Well, the All Writs Act comes into
23 play only if you don't agree to give me the names. And
24 let me tell you what gives me my concern and why I think
25 you ought to share thus far, given the Government's

1 interest in protecting the anonymity of the victim, um,
2 you succeeded and as far as I know it hasn't been
3 disclosed. But you've done better so far than others.

4 About a year ago, the Department of Justice made a
5 decision not to charge Elliot Spitzer and to call him
6 "Client Number 9" in filings that were made with the
7 Court derived from wiretap information. If you read the
8 New York Times, for example, March 10, 2008 and March
9 11, 2008, the New York Times reports that law
10 enforcement officials were among those who didn't follow
11 the decisions made by the Attorney General or his
12 designee in not indicting or naming Governor Spitzer,
13 they just put the information up. In that case, that
14 may have been a crime because 18 United States Code
15 Section 2511(1)(d)(1) prohibits, makes it a crime,
16 punishable by five years in prison, to disclose
17 information derived from a wiretap without a court
18 order.

19 To my knowledge, the Department of Justice didn't
20 investigate that. You don't want to -- you don't want
21 that to happen. And, you know, I think I have the
22 authority under the All Writs Act, but I've been reading
23 about Miss Robinson in this case. I haven't been
24 studying the All Writs Act since this occurred to me
25 yesterday. But given your interest, I think (A) it

1 would be -- it would serve those interests if I had
2 those names, and if you agreed, I should just order that
3 the people who now have the information not disclose it
4 except to use it in the course of some -- you know, in
5 the course of their work. They may do some ongoing
6 investigation. I hope you will. Because then if one of
7 your colleagues does something that you don't want them
8 to do, that will be a criminal contempt and they'll face
9 the same kind of penalties that Miss Robinson faces if
10 she violates my orders, the conditions of her supervised
11 release.

12 So given the fact that the U.S. Attorney's Office
13 has ardently arguing that confidentiality is important
14 and given the fact that in cases before me and in even
15 more prominent cases before other judges, that
16 nevertheless law enforcement officials have leaked
17 things they're not supposed to leak, I would think you'd
18 like that kind of order.

19 MR. LEVENSON: I think we start from the
20 common ground in terms of the prophylactic effort of
21 identifying it. I think there is a difference that I
22 think is important to consider here, a couple of
23 differences that inform my recommendation of what
24 amounts to a sentence, in some respects a half measure,
25 which is to say, gather the information so that in the

1 event of a question about whether Miss Robinson has
2 violated the terms of her probation, we are in a
3 position to engage in a meaningful inquiry informed by
4 prospectively-gathered information rather than the
5 scramble for -- the retrospective scramble. There we're
6 at common ground.

7 The concern I have, um, and I have a couple of
8 concerns, both prudential as well as juris prudential,
9 if you will. The juris prudential one is -- is what I
10 see as a difficult question at best as to whether the
11 All Writs Act authorizes orders to third parties at
12 large. And in particular --

13 THE COURT: Well, no, actually I've thought
14 about this, too. You're not a third party. You're a
15 party.

16 MR. LEVENSON: Yes, the Government is a party
17 to this action.

18 THE COURT: I think there are limits to how
19 far the order can go with regard to Miss Robinson, but I
20 assume Mr. Smith's going to represent Miss Robinson. Go
21 ahead.

22 MR. LEVENSON: Okay. And I have to say that
23 had played into my thinking of, the reality of -- the
24 interest that -- um, if I can bring in another point of
25 reference. I don't mean to be muddying the issue, but I

1 think it's a very difficult issue with no clear
2 guidance, so I'm looking for a couple of principles.
3 And one point of reference was this Court's decision in
4 connection with the earlier motion by the Press for
5 access to the name, and the question of can the Press
6 force the Government to turn over the name? Which
7 raises the fact that we're dealing here with information
8 that, on the one hand, is private, the private acts of a
9 private individual who is obviously ashamed of shameful
10 conduct, and on the other hand, there is the
11 Government's interest in prosecuting the perpetrator of
12 an extortion, which is a different issue from protecting
13 -- there's no general right of an individual to be
14 protected from scrutiny at large.

15 THE COURT: Well, actually let me -- we've got
16 a lot to do and I actually have an important limitation
17 on my time this afternoon. We're going to be finished
18 by today. You know, there may be a hybrid and we can
19 come back to it. (A) I think if you gave me the
20 information under seal, I wouldn't be making a decision
21 based on it now and therefore I doubt I would be
22 persuaded to unseal it, so the media would have more
23 people they could go ask for it. But if you want to
24 represent that you've collected all that information,
25 that you'll hold it, maybe I don't even need it now,

1 because unless there's an alleged violation, I don't
2 need to know the universe of people who have the
3 information. But I could order that the people listed
4 on the document that the U.S. Attorney is holding not
5 disclose it except to people who need to know it to
6 perform their professional responsibilities. And then
7 if there's ever an issue, you'll deliver it to me and
8 I'll decide if any of those people are in contempt of my
9 order.

10 MR. LEVENSON: I think the source of authority
11 is a little different here where there's no criminal
12 prescription on it and I think there are probably is a
13 source of authority for an order along those lines in
14 the Victim Protection Act. So that may be the vehicle,
15 rather than the All Writs Act, for getting there.

16 THE COURT: Well, that's why I raised it. And
17 if -- you know, would you object to such an order? You
18 keep the names.

19 MR. LEVENSON: Yeah, I don't think that's an
20 unreasonable order.

21 THE COURT: In fact, it is consistent with
22 what you're arguing about the All Writs Act. Because,
23 as I say, so far you've done it, and that's why I've got
24 the issues that I have, but despite the best efforts of
25 some people, as the Spitzer case prominently suggests,

1 sometimes there are Government leaks. And I just think
2 there ought to be sanctions across the board for anybody
3 who does what you don't want done.

4 Okay. Now, with regard to --

5 MR. LEVENSON: I'm not sure I can -- I don't
6 mean to tendentious on this point and I know you want to
7 move on. I'm not sure I can go all the way from saying
8 that an extortionist who is prevented from inflicting
9 the harm that she threatened is in the same position as
10 government officials who ought to follow the law, ought
11 to respect the Victim Witness Act, but are not --
12 there's no sign of a violation now and they are already
13 required to follow the law and to respect the law.

14 THE COURT: And what's going to happen if they
15 don't, are you going to send them to the office of
16 professional responsibility? I mean, there should be --

17 MR. LEVENSON: I don't know the answer now.

18 THE COURT: There should be a sanction. But
19 all right.

20 MR. LEVENSON: So deciding that sanction now
21 -- the only point is, deciding that sanction now may not
22 be our best course.

23 THE COURT: All right. And if, you know,
24 somebody -- if I enter the order, particularly with your
25 agreement, and it turns out that somebody violated the

1 order, there are ways of challenging the lawfulness of
2 the order. But you don't want this ever to become an
3 issue and neither do I. I just want people to be on
4 clear notice that they're subject to some restrictions
5 and that they'll be consequences if they violate it.

6 Okay. And, Mr. Smith, you know, Miss Robinson is
7 in a different position. I think it would be very much
8 in her interest if I knew, now or sooner, or if you
9 knew, now or sooner, and had a document that I could
10 order you to produce if it ever becomes an issue as to
11 who has this information as of today, because that would
12 be the universe of people -- well, who has the
13 information as of today?

14 MR. SMITH: Well, I know my client wants to
15 comply with that request, your Honor, and, again, I only
16 represent Miss Robinson and I can't speak for other
17 individuals or other people. And I just want to
18 acknowledge that I think she's going to comply with that
19 order to the best of her ability and her memory,
20 understanding that she's been in jail for six months.

21 THE COURT: All right. And we'll come back to
22 this later, if we get to the sentencing phase, which I
23 hope we will, and you hope we will. But the orders
24 wouldn't be entirely symmetrical. I have to issue the
25 order to her, but the condition, if I impose it, will

1 say that she can't publicize, meaning disclose it to
2 anybody. You know, if she were to say it to one of her
3 relatives and the relative said it to the Boston Globe,
4 she would be in violation of the condition because she
5 told her relative, even though she's not the one who
6 told the Boston Globe. If there are already some people
7 out there who know the name, it would help her argue,
8 should this ever become an issue, "I didn't, after the
9 day I was sentenced, tell him or her."

10 MR. SMITH: Arguably, the longer the list, the
11 more protection she'd have in some way. Is that --

12 THE COURT: Well, yeah. Look, I've conducted
13 leak investigations and it's hard to do. If this name
14 gets out and she didn't -- and you want to persuade me
15 that she didn't put it out, it's going to help you to be
16 able to argue that she wasn't the only one who knew it,
17 and the more people who knew it, the better chance you
18 may have of keeping her out of prison as long as her
19 defense is truthful.

20 MR. SMITH: I understand.

21 THE COURT: We'll come back to this.

22 MR. SMITH: Thank you.

23 THE COURT: But actually I think I need to put
24 the question to you this way and it's part of the reason
25 I raise it now and not just later, because I can't add

1 terms to the sentence unless you all agree with it. I
2 can reject it, but I cannot -- so what you need to tell
3 me, or if necessary think about, is whether this term
4 would be mutually acceptable.

5 MR. SMITH: Between the Government and the
6 defense?

7 THE COURT: No. No, whether -- well, yeah,
8 whether --

9 MR. SMITH: We would accept it, your Honor.
10 My client would accept it, your Honor.

11 THE COURT: All right. And although they
12 wouldn't be framed exactly the same way. It's not part
13 of the sentence with regard to the Government, it's an
14 ancillary order, which is what the All Writs Act
15 ordinarily covers.

16 Okay. And then the plea agreement has a waiver of
17 right to appeal in Paragraph 7. So if Mr. Smith, I'll
18 eventually be asking you whether you've talked with the
19 defendant about that. It has a forfeiture provision.

20 Is there anything else I should have in mind with
21 regard to the plea agreement?

22 MR. DOWDEN: The only other thing, your Honor,
23 is, as you mentioned, it calls for the Government to
24 dismiss Count 1 of the indictment and she would plead to
25 Counts 2 and 3.

1 THE COURT: And you also are going to want me
2 to dismiss the information?

3 MR. DOWDEN: Yes, to the extent it's not
4 already dismissed. Yes, sir.

5 THE COURT: All right. Under the relatively
6 -- well, under the Crime Victim's Rights Act, the CVRA,
7 and the relatively new Federal Rule of Criminal
8 Procedure 60, the victim has a right to attend any
9 hearing involving a plea or a sentencing, among other
10 things, and a right to be heard, either personally or
11 through a representative or through the Government. Was
12 the victim notified of this proceeding?

13 MR. DOWDEN: Yes, your Honor, a victim letter
14 was sent out in the ordinary course, as the Government
15 usually does, and I understand that counsel for the
16 victim is in the courtroom today.

17 THE COURT: All right. And do you know
18 whether he wishes to be heard with regard to the plea or
19 the sentence?

20 MR. DOWDEN: I think he's reserving his right
21 to be heard, your Honor. I don't know if he --

22 THE COURT: Well, perhaps he could identify
23 himself if he's here.

24 MR. STERN: Good afternoon, your Honor. My
25 name is Donald K. Stern with the law firm of Cooley,

1 Godward and Kronish, and I do represent the victim in
2 this case.

3 THE COURT: Okay. And does your client,
4 directly or do you on his behalf, want to be heard with
5 regard to the plea or the sentence at an appropriate
6 time?

7 MR. STERN: Yes, or at least depending upon
8 how it progresses, I would like to -- I may want to say
9 something before your Honor makes a decision.

10 THE COURT: Well, let me ask you this.

11 MR. STERN: Whatever time you think is
12 appropriate.

13 THE COURT: Well, there's essentially two
14 points. The first thing I'm going to do is go through
15 the usual Rule 11 colloquy with regard to Miss Robinson
16 and decide whether to accept the plea, but not the plea
17 agreement and the sentence. Do you want to be heard
18 before I do that Rule 11 colloquy?

19 MR. STERN: No, your Honor.

20 THE COURT: Then ordinarily I would give the
21 victim a chance to speak before I hear from the
22 government and the defendant about the appropriate
23 sentence, or in this case, whether to accept it. There
24 may be an opportunity for some flexibility here. But
25 when we get to that point, I'll ask you again, if you

1 want to be heard.

2 MR. STERN: That's fine, your Honor. The
3 victim does support the plea agreement, just to get to
4 the bottom line, and I can make those comments at
5 whatever point in the procedure is appropriate.

6 THE COURT: Okay. A little later.

7 All right. Miss Robinson should approach the
8 witness stand. She's already been sworn. And,
9 Mr. Smith, ideally you would go with her with a copy of
10 the plea agreement and the indictment.

11 MR. SMITH: I have those, your Honor.

12 THE COURT: Would you, again -- do you
13 understand that you're still under oath?

14 THE DEFENDANT: Yes.

15 THE COURT: Do you understand, again, that if
16 you intentionally give me a false answer to any
17 question, that could be a separate prosecutable criminal
18 offense?

19 THE DEFENDANT: Yes.

20 THE COURT: And do you understand that if
21 you're confused by any of my questions or unsure about
22 what an honest or accurate answer would be, I'll let you
23 talk to Mr. Smith so we can clear up any confusion and
24 so you can give me a reliable response?

25 THE DEFENDANT: Yes.

1 THE COURT: Have you ever been arrested or
2 convicted under any name other than the name you gave me
3 a short time ago?

4 THE DEFENDANT: Yes.

5 THE COURT: What other name or names have you
6 been arrested or convicted under?

7 THE DEFENDANT: Um, Michelle Wilkinson.

8 THE COURT: How old are you?

9 THE DEFENDANT: Um --

10 THE COURT: I'm sorry. Mr. Smith, is there
11 something you want to discuss with her?

12 THE DEFENDANT: Um, and Michelle Garcia. I
13 have filed for divorce and I wanted to go over to my
14 mother's maiden name. I've been notified -- I was
15 arrested under Michelle Garcia, but I'm legally now
16 Michelle Garcia.

17 THE COURT: Okay. Pull that microphone a
18 little closer to you. Try to speak into it clearly and
19 loudly. How old are you?

20 THE DEFENDANT: 29.

21 THE COURT: How far did you go in school?

22 THE DEFENDANT: Some college. Finished high
23 school.

24 THE COURT: Have you ever been treated for
25 mental illness or drug addiction?

1 THE DEFENDANT: No.

2 THE COURT: Are you today under the influence
3 of any drug, medication or alcohol?

4 THE DEFENDANT: No.

5 THE COURT: Have you received a copy of the
6 indictment with three charges against you including two
7 that charge you with wire fraud?

8 THE DEFENDANT: Yes.

9 THE COURT: Did you read that?

10 THE DEFENDANT: Yes.

11 THE COURT: Did you discuss the charges with
12 Mr. Smith including what the Government would have to
13 prove beyond a reasonable doubt to convict you of the
14 wire fraud charges?

15 THE DEFENDANT: Yes.

16 THE COURT: Are you fully satisfied with
17 Mr. Smith's work as your lawyer?

18 THE DEFENDANT: Yes.

19 THE COURT: Do you have a copy of the letter
20 dated January 6, 2009 to Mr. Smith from the Government?

21 THE DEFENDANT: Yes.

22 THE COURT: Did you sign that -- we'll make
23 that Exhibit 1 with today's date.

24 Did you sign that letter on the last page on or
25 about January 9, 2009?

1 THE DEFENDANT: Yes.

2 THE COURT: Did you read it before you signed
3 it?

4 THE DEFENDANT: Yes.

5 THE COURT: Did you discuss it with Mr. Smith
6 before you signed it?

7 THE DEFENDANT: Yes.

8 THE COURT: Does that letter both accurately
9 and completely describe your agreement with the
10 government?

11 THE DEFENDANT: Yes.

12 THE COURT: Has anybody made any promises to
13 you or given you any assurances that are not in that
14 letter?

15 THE DEFENDANT: No.

16 THE COURT: Has anybody threatened you or
17 tried to force you to plead guilty?

18 THE DEFENDANT: No.

19 THE COURT: Do you understand that this is
20 what's called a binding plea agreement and, therefore,
21 if I accept the agreement, I have to impose the sentence
22 that's described in the letter, and if I don't accept
23 the agreement, I have to tell you I'm not going to
24 impose that sentence and give you a chance to withdraw
25 your plea?

1 THE DEFENDANT: Yes.

2 THE COURT: Do you understand that if I accept
3 the plea agreement I will sentence you to six months
4 incarceration, to be followed by six months in home
5 detention, as part of three years of supervised release,
6 restitution of \$280,000, forfeiture as set forth in the
7 plea agreement, and a \$200 mandatory special
8 assessment?

9 THE DEFENDANT: Yes.

10 THE COURT: Do you understand that one of the
11 conditions of your supervised release will be that you
12 cannot tell anybody, except your lawyer and people
13 working with him, the name of the victim or the identity
14 of the victim?

15 THE DEFENDANT: Yes.

16 THE COURT: And do you understand that if you
17 were to disclose the victim's identity, that would be a
18 violation of that condition of your supervised release,
19 your supervised release could be revoked, you could be
20 locked up for up to three years, and then put on
21 supervised release again?

22 THE DEFENDANT: Yes.

23 THE COURT: Do you understand that -- I've
24 been told that, in addition to what you agreed in the
25 letter, by Mr. Smith, that you were also agreeable to

1 giving him, and if I order it, me, the names of all the
2 people you've, up until now, told the victim's
3 identity?

4 THE DEFENDANT: Yes.

5 THE COURT: And you can talk about this with
6 Mr. Smith if you want. And is that acceptable to you?

7 THE DEFENDANT: Yes, it is.

8 THE COURT: Please go over to Page 4 of that
9 plea agreement. Do you see Paragraph 7 there?

10 THE DEFENDANT: Yes.

11 THE COURT: Do you understand that in that
12 Paragraph 7 you're giving up your rights to appeal and
13 to otherwise challenge anything in this case if I give
14 you the sentence that you agree to in this plea
15 agreement plus the additional condition of disclosing
16 the names of people who already know the victim's
17 identity that I just mentioned?

18 THE DEFENDANT: Yes.

19 THE COURT: And have you discussed with
20 Mr. Smith specifically whether you want to give up those
21 rights?

22 THE DEFENDANT: Yes.

23 THE COURT: And is that something you want to
24 do?

25 THE DEFENDANT: Yes.

1 THE COURT: Do you understand that if I accept
2 your plea of guilty, you'll become a Federal felon and
3 you may lose certain rights, if you have them, including
4 the right to vote, to hold public office, to serve on a
5 jury, and to possess a firearm?

6 THE DEFENDANT: Yes.

7 THE COURT: Do you understand that the maximum
8 possible penalties are as stated in Paragraph 2 of the
9 plea agreement, that is, on each of the two counts of
10 wire fraud, you could be sentenced to up to 20 years in
11 prison, plus 3 years supervised release, a fine of
12 \$250,000, and a mandatory \$100 special assessment?

13 THE DEFENDANT: Yes.

14 THE COURT: Do you understand that supervised
15 release means that when you get out of jail or prison
16 you'll be under the supervision of the Probation
17 Department on certain conditions, and if you violate any
18 of those conditions, your supervised release can be
19 revoked and you can be locked up again for up to three
20 years?

21 THE DEFENDANT: Yes.

22 THE COURT: And then put on supervised release
23 again?

24 THE DEFENDANT: Yes.

25 THE COURT: Do you understand that the

1 sentencing in this case will be governed by the Advisory
2 Guideline System that is now in effect in Federal
3 court?

4 THE DEFENDANT: Yes.

5 THE COURT: Have you talked with Mr. Smith
6 about how that Advisory Guideline System might operate
7 or apply in your case?

8 THE DEFENDANT: Yes.

9 THE COURT: And do you understand that under
10 that system essentially I'm required to calculate a
11 guideline range, and in this case, because there's an
12 agreed sentence, either decide that the agreed sentence
13 is reasonable or reject the plea and give -- the plea
14 agreement and give you a chance to withdraw your guilty
15 plea?

16 THE DEFENDANT: Yes.

17 THE COURT: Do you understand that while
18 you've given up your rights to appeal, if I accept the
19 agreed upon sentence, the Government still has a right
20 to appeal?

21 THE DEFENDANT: Yes.

22 THE COURT: Do you understand that there's no
23 parole in the Federal system so you'll have to serve
24 essentially all of the time in jail that's imposed?

25 THE DEFENDANT: Yes.

1 THE COURT: Do you understand that you still
2 have a right, if you want to use it, to have a trial
3 decided by a jury?

4 THE DEFENDANT: Yes.

5 THE COURT: And do you understand that in
6 connection with a trial, you have a right to a lawyer,
7 and if you can't afford a lawyer, a lawyer will be
8 appointed to continue to represent you at public
9 expense?

10 THE DEFENDANT: Yes.

11 THE COURT: Do you understand that if we had a
12 trial, you would be presumed innocent, you would not
13 have to prove you were innocent, rather the government
14 would have to prove you were guilty beyond a reasonable
15 doubt to achieve your conviction?

16 THE DEFENDANT: Yes.

17 THE COURT: Do you understand that if we had a
18 trial, you would have an opportunity, through your
19 lawyer, to object to the Government's evidence and
20 challenge its witnesses?

21 THE DEFENDANT: Yes.

22 THE COURT: Do you understand that as part of
23 that -- no. Do you understand that you would also have
24 an opportunity, but not an obligation, to present a
25 defense including compelling the attendance of witnesses

1 to testify and the production of documents?

2 THE DEFENDANT: Yes.

3 THE COURT: Do you understand that you would
4 also have an opportunity, but not an obligation, to
5 testify yourself and if I instructed you -- well, if you
6 decided not to testify, I would instruct the jury that
7 it could draw no suggestion that you were guilty from
8 your decision not to testify?

9 THE DEFENDANT: Yes.

10 THE COURT: Do you understand that if I accept
11 your guilty plea and then accept the plea agreement,
12 you'll be giving up your right to a trial and there will
13 be no trial?

14 THE DEFENDANT: Yes.

15 THE COURT: All right. Do you have a copy of
16 the indictment there?

17 MR. SMITH: Yes, I do, your Honor.

18 THE COURT: Miss Robinson, did you, indeed,
19 read all of this indictment?

20 THE DEFENDANT: Yes.

21 THE COURT: I'll like you to keep all of it in
22 mind, but I'm going to focus on Counts 2 and 3, the wire
23 fraud counts, the alleged violations of 18 United States
24 Code Section 1343. Do you understand that to prove each
25 of the charges in Counts 2 and 3, the Government would

1 have to prove beyond a reasonable doubt, first, a scheme
2 substantially as charged in the indictment to defraud or
3 to obtain money or property by means of false or
4 fraudulent pretenses; two, that you knowingly, meaning
5 intentionally, and willfully, knowing it was illegal,
6 participated in the scheme with intent to defraud; and
7 third, interstate wire communications on or about the
8 date alleged occurred in furtherance of the scheme?

9 THE DEFENDANT: Yes.

10 THE COURT: And do you understand that
11 interstate wire communications include wire transfers of
12 funds between financial institutions?

13 THE DEFENDANT: Yes.

14 THE COURT: And do you understand that a
15 "scheme" is some plan or course of action, and to
16 "defraud" means to deceive somebody else to get money by
17 misrepresenting some material fact?

18 THE DEFENDANT: Yes.

19 THE COURT: And do you understand that a
20 material fact is one that has a tendency to influence
21 the person it is directed at?

22 THE DEFENDANT: Yes.

23 THE COURT: Now, Counts 2 and 3 charge as
24 follows, starting at Paragraph 17. It says: "On or
25 about the date set forth below in the District of

1 Massachusetts and elsewhere, you, Michelle Robinson,
2 having devised and intending to devise a scheme to
3 defraud and for obtaining money and property by means of
4 false and fraudulent pretenses, representations and
5 promises concerning material facts for the purpose of
6 executing such scheme and artifice did transmit," and
7 here it says "and," but it really means "or," "or cause
8 to be transmitted by means of wire communication in
9 interstate commerce, from one state to another, the
10 following:"

11 Count 2 charges that on or about July 24, 2008, as
12 part of your scheme, you caused the transfer of \$80,000
13 from the Mellon Bank to another branch of the Mellon
14 Bank. Did you commit that crime?

15 THE DEFENDANT: Yes.

16 THE COURT: Count 3 charges that on the same
17 date, or on or about that date, you also caused the
18 transfer of \$200,000 from the Mellon Bank to the Bank of
19 America. Did you commit that crime?

20 THE DEFENDANT: Yes.

21 THE COURT: Now, I'd like you to listen while
22 the government summarizes what its evidence would have
23 been if this case went to trial, and then I'm going to
24 ask you if you agree with the government's summary of
25 what you did.

1 MR. DOWDEN: Thank you, your Honor.

2 If this case were to proceed to trial, the
3 government to prove the following.

4 Over some period of time, beginning no later than
5 2007, the defendant, Michelle Robinson, entered a
6 consensual sexual relationship with BP, a married
7 business person. BP is not an elected official, nor a
8 public official.

9 At some point during her relationship with BP,
10 Robinson recognized that BP was a successful business
11 person who had substantial monetary assets and further
12 recognized that public exposure of her relationship to
13 him would subject him to reputational harm.

14 Beginning no later than July 22, 2008, Robinson
15 concocted a scheme to extort money from BP by
16 threatening to expose her relationship with him to a
17 third-party, including to an individual she referred to
18 as a member of the media, who she claimed offered her
19 money to reveal her relationship with BP. As Robinson
20 well knew, however, there was no such third-party who
21 offered her money to reveal such relationship.

22 In particular, Robinson sent a series of
23 threatening communications to BP in which she demanded
24 money or she would expose BP. In response to Robinson's
25 demand, BP initially paid her \$80,000 in cash. In order

1 to obtain and replenish the funds necessary to obtain
2 this cash, there was an interstate wire of monies from
3 accounts maintained by BP that was transmitted on or
4 about July 24th, 2008.

5 After receiving the \$80,000 in cash, Robinson
6 demanded more money from BP and threatened to reveal him
7 to a member of the media she claimed was interested in
8 this information. BP paid her \$200,000 in cash in
9 response to those demands. Again, to obtain the funds
10 necessary to make this payment, an interstate wire
11 transfer of funds was executed on or about July 24th,
12 2008.

13 The Government's evidence at trial would include
14 bank records, phone records, recorded telephone
15 conversations and text messages as well as testimony
16 from both civilian and law enforcement witnesses.

17 Thank you, your Honor.

18 THE COURT: Do you agree with the Government's
19 summary of what you did?

20 THE DEFENDANT: Yes.

21 THE COURT: And how do you now wish to plead
22 to Counts 2 and 3, guilty or not guilty?

23 THE DEFENDANT: Guilty.

24 THE COURT: Then I'll -- do you want to say
25 something?

1 MR. DOWDEN: Yes, your Honor. I don't believe
2 the defendant was advised of the statutory maximums and
3 if the Court would like to --

4 THE COURT: Yes, she was, I read her Paragraph
5 2 of the plea agreement.

6 MR. DOWDEN: Oh, I apologize then, your Honor.

7 THE COURT: Do you remember I read you
8 Paragraph 2 of the plea agreement that recited the
9 maximum possible penalties?

10 THE DEFENDANT: 20 years to life.

11 MR. DOWDEN: Thank you, your Honor. I
12 apologize.

13 THE COURT: Well, I am accepting the plea, but
14 making no decision at this moment on the plea
15 agreement. I'm doing that, accepting the plea, because
16 I find you are competent, you are acting knowingly and
17 voluntarily, you are effectively represented, and
18 there's an independent basis in fact to support your
19 plea. You may take your seat back at the table.

20 (Takes seat at table.)

21 THE COURT: Now we will move to the sentencing
22 phase of this proceeding.

23 In connection with the sentencing, I have the
24 presentence report, the financial statement that the
25 defendant gave to Probation, and today's February 20,

1 2009 memo from Probation with copies to the parties,
2 which I'll make part of the presentence report. It
3 revises the calculation. I also have the Government's
4 sentencing memo, the defendant's sentencing memo, the
5 financial affidavit provided to the Government pursuant
6 to the plea agreement, which I have placed under seal.
7 The defendant's submission today provided some
8 additional information concerning the financial
9 statement that was given to probation.

10 I've looked at the -- let's see. I think that's
11 it. Is there anything else I should have received and
12 read relating to sentencing?

13 MR. DOWDEN: Nothing further from the
14 Government, your Honor.

15 MR. SMITH: No, your Honor. Although, we did
16 incorporate in the letter we sent this morning, I
17 believe, a statement regarding somebody staying at the
18 house that we propose she reside at. Probation had a
19 concern. We addressed that concern by voluntarily
20 requesting that person to move out and Probation appears
21 satisfied. I think we wrote that in a letter to the
22 Court.

23 THE COURT: Actually. (Looks.)

24 MR. SMITH: That should have come with the
25 financial statement, as the cover page of the financial

1 statement that we submitted this morning, your Honor.

2 THE COURT: Oh, okay. Yes. That's under
3 seal. It's my understanding that if there's an
4 operative telephone, Probation is content to have Miss
5 Robinson reside at that address if I accept the binding
6 plea agreement.

7 All right. Then, I think it's important to assure
8 that there's a clear and common sense of the legal
9 landscape here. We are under the Advisory Guideline
10 System that is in effect after the Supreme Court's
11 decisions in **Kimbrough** and **Gall**. As the Supreme Court
12 described in **Gall**: "A court, a District Court should
13 begin all sentencing proceedings by correctly
14 calculating the applicable guideline range. The
15 guidelines should be the starting point and the initial
16 benchmark. The guidelines are not the only
17 consideration, however. Accordingly, after giving both
18 parties an opportunity to argue for whatever sentence
19 they deem appropriate, the District Judge should then
20 consider all of the Section 3553A factors to determine
21 whether they support the sentence requested by a party.
22 In so doing, he may not presume that the guideline range
23 is reasonable, he must make an individualized assessment
24 based on the facts presented. If he decides that an
25 outside guideline sentence is warranted, he must

1 consider the extent of the deviation and ensure the
2 justification is sufficiently compelling to support the
3 degree of the variance." The Supreme Court said and
4 found it uncontroversial that "a major departure should
5 be supported by a more significant justification than a
6 minor one. After settling on the appropriate sentence,
7 the judge must adequately explain the chosen sentence to
8 allow for meaningful appellate review and to promote the
9 perception of fair sentencing."

10 Do the parties agree that that's the general
11 framework?

12 MR. DOWDEN: Yes, your Honor.

13 MR. SMITH: Yes, your Honor.

14 THE COURT: We are operating under the current
15 guideline manual. This is a binding plea agreement.
16 It's my understanding, under 6(b)(1.2)(c), that to the
17 extent the lower the guideline sentence is regarded as a
18 departure, I have to decide if the sentence departs for
19 justifiable reasons. And the commentary points me to
20 Section 3553B to determine if there are justifiable
21 reasons. Essentially I have to determine whether this
22 case is of a kind -- was outside the heartland that
23 involves something in kind or degree that wasn't taken
24 into account by the Sentencing Commission when it
25 developed the guidelines.

1 Post **Booker** I think I'm directed to make that
2 analysis under Section 3553A, to consider those factors
3 and decide whether the sentence is justified. I guess
4 I'm still in the frame of mind that I was in in 1994
5 when I had a binding plea agreement in the **C.R. Bard**
6 **case**, 848 F. Supp. 287 at 288. Essentially it's my view
7 that if the agreed sentence is the result of arm's
8 length bargaining between capable counsel, I should
9 accept it if it's within the range of reason. The
10 burden of proof is on the parties to persuade me that a
11 lower than guideline sentence is justified, is
12 reasonable, based on the Section 3553A factors. That
13 was discussed somewhat by the court in Nebraska and
14 **Coney**, 390 F. Supp. 2nd 844 at 850.

15 But essentially it's my present view that I should
16 accept the binding plea agreement and impose the agreed-
17 upon sentence if it's within the range of what I regard
18 as reasonable and I consider the Section 3553A factors
19 even if it isn't the exact sentence I would select in
20 the absence of a binding plea agreement.

21 Does somebody have a different view of what
22 standard I should apply?

23 MR. DOWDEN: No, your Honor.

24 MR. SMITH: No, your Honor.

25 THE COURT: Mr. Smith, let me ask you then.

1 Have you and Miss Robinson each read the presentence
2 report?

3 MR. SMITH: Yes, we have, your Honor.

4 THE COURT: Is there anything in there that
5 you or she thinks is inaccurate?

6 MR. SMITH: No. Our plea agreement, we
7 conceded that this is a Level 21 offense. With the
8 revised plea agreement, it comes back with the same
9 number, so we would agree with that.

10 THE COURT: Okay. Miss Robinson, did you read
11 the presentence report?

12 THE DEFENDANT: Yes.

13 THE COURT: Is there anything you saw in there
14 that you think is inaccurate?

15 THE DEFENDANT: No.

16 THE COURT: Then -- there was a difference in
17 the guideline calculations between the plea agreement
18 and the presentence report. The parties calculate the
19 guidelines as 27 to 33 months. Implicit in that is that
20 they believe this is a level -- a Level 18, Criminal
21 History category 1. I think the parties used Section
22 2(B)(1.1), an intended loss of \$580,000, to get to
23 that. The presentence report had this at a Level 21,
24 using the same loss amount, but the cross-reference to
25 blackmail in Section 2(b)(3.3) that starts with a base

1 Offense Level of 9 rather than 7.

2 In the memo today, Probation also comes out at
3 18-1 with guidelines of 27 to 33 months by a different
4 method. They continue to use the cross-reference, but
5 they find it's impermissible to count the \$300,000 that
6 was the subject of the last demand, but is not the
7 subject of either of the counts.

8 As I said, I'm prepared to accept what the parties
9 and Probation have found, that the guideline range is 27
10 to 33 months. It's an 18-1. But as I said earlier,
11 given the nature of this case, even if it -- the
12 guideline range is 33 to 41 months, um, that may not be
13 material. Either your agreed-upon sentence is within
14 the range of reason or it isn't. But since the parties
15 and Probation are in agreement, I accept that the Total
16 Offense Level is 18, the Criminal History Category is
17 1. Therefore, the Advisory Guideline Range is 27 to 33
18 months in prison, 24 to 36 months supervised release, a
19 fine range of \$6,000 to 4 million dollars, restitution
20 of \$280,000, which I understand the -- and a special
21 assessment of \$200.

22 I'm told by Probation that the victim has waived
23 his right to restitution and in that circumstance any
24 order of restitution will be directed to the Crime
25 Victim Fund under 3664G(2). However, I say that in part

1 at this time because if Mr. Stern, on behalf of the
2 victim, has a different view as to where the restitution
3 should go, I need to be told.

4 All right. Do the parties agree that I've just
5 accurately recited the guideline ranges?

6 MR. DOWDEN: Yes, your Honor.

7 MR. SMITH: Yes, your Honor.

8 THE COURT: All right. Mr. Stern, is there
9 something you now would like to say on behalf of the
10 victim?

11 MR. STERN: Yes. Thank you, your Honor.

12 And just to address the last point first. As your
13 Honor pointed out, there is a provision in the
14 Restitution Act which contemplates the victim waiving
15 whatever rights the victim has to restitution and those
16 funds, to the extent that they are funds down the road,
17 be provided to the Crime Victims Fund. And so the
18 victim is prepared to -- he would like that to be the
19 case.

20 THE COURT: Okay.

21 MR. STERN: Your Honor just to make a brief
22 statement on behalf of my client.

23 Clearly he made some very bad decisions along the
24 way. He very much regrets that. He regrets it on many,
25 many different -- in many, many different ways. He

1 regrets in taking the time of the Court. He regrets the
2 resources that have been used by the Government to
3 investigate and prosecute this case. And, in fact, he
4 regrets that Miss Robinson is now a defendant before the
5 court.

6 But having in mind all the circumstances -- and I
7 should say, by the way, that he appreciates the efforts
8 of all involved in coming to this plea agreement, the
9 efforts on the part of the Government to promptly and
10 thoroughly investigate this case. It was candidly at my
11 urging, when he came to me, that I thought the only
12 course of action that was responsible and appropriate
13 was to bring this to the attention of law enforcement
14 authorities. But both the Government and defense
15 counsel, I think, have engaged in good faith discussions
16 and reached, I think, a reasonable resolution.

17 It's as your Honor alluded to, it may not be
18 perfect, and it may not be the one that the Court
19 independently, absent the plea agreement being
20 presented, might have arrived at at its own, but I think
21 it's a resolution which takes account of the particular
22 circumstances of the case, one which seeks to avoid the
23 very result threatened by the crime that's been charged
24 and now it's the one which the defendant plead guilty.
25 As the Court noted in an earlier opinion in this case,

1 that's the very harm that the prosecution seeks to
2 punish here. And it also takes account of the fact that
3 the Court and the criminal justice system ought to be
4 avoiding harm to victims where it's reasonable to do so
5 and where it's possible.

6 You know, I've been doing this long enough, and I
7 know your Honor has, to remember that there was a time
8 that the Government and the courts, for that matter,
9 really didn't care what victims thought, really didn't
10 care the position that victims had. And I'm pleased to
11 say that actually this district, the District of
12 Massachusetts and the Commonwealth of Massachusetts, the
13 state courts, have really been in the forefront of
14 protecting the rights of victims for 20, 25, 30 years.

15 So the crime -- the victims Rights Act really was
16 not, in my view, directed to the District of
17 Massachusetts or to a sister judicial system on the
18 state side, because I think that this system and the
19 Commonwealth have been doing this for a long time. But
20 when Congress passed the bill in 2006, it was designed
21 to really send a message nationwide that the rights of
22 the victim, including the privacy, legitimate privacy
23 rights of the victim, do matter. So victims do have
24 rights and they're not just, as your Honor noted in your
25 opinion, they're not just aspirational rights, they're

1 real rights, and they're designed to protect the dignity
2 and privacy.

3 THE COURT: Well, they almost became
4 constitutional rights. Until recently I served on the
5 National Advisory Committee on criminal rules, which had
6 the responsibility of implementing the Crime Victim
7 Rights Act resulting in Rule 60, which isn't even yet in
8 our books. But there is a very strong nationwide
9 movement to give considerably more protection to victims
10 including, as you say, their privacy in appropriate
11 circumstances. And there was a serious effort to get
12 Congress to vote a constitutional amendment that would
13 enshrine those interests, protection for those interests
14 in the Constitution.

15 But instead of proceeding in that fashion,
16 Congress passed the Crime Victims Rights Act, you know,
17 which is part of the reason you get to speak here
18 today. But, you know, it is a law that, you know,
19 reflects the perception that, particularly at
20 sentencing, but not just at sentencing, it shouldn't
21 just be the Government and the defendant who are
22 considered, but if there's a victim, an identifiable
23 victim, that person's interests should be considered and
24 he, individually or through a representative, is
25 entitled to have a voice so the judge can make a more

1 fully informed decision.

2 MR. STERN: And I think, in this case, your
3 Honor, and I'll conclude on this, I do think this
4 strikes the right balance. Again, it's not perfect, but
5 it does -- as the Government has pointed out, I think it
6 does send a deterrent message. I think it does
7 encourage other persons in positions like this who, for
8 whatever reason, including some bad decision on their
9 part, to come forward to appropriate authorities if need
10 be. And I think it also provides with a significant
11 period of supervised release, you know, some real
12 services to the defendant. And I sincerely hope that
13 the Probation Department is in a position to provide
14 those services.

15 THE COURT: Well, they're in a position to
16 provide them. What you should sincerely hope is that
17 she's smart enough to take advantage of it if I accept
18 this sentence. Okay. Thank you, very much.

19 MR. STERN: Thank you, your Honor.

20 THE COURT: All right. The Government should
21 remind me, although I think I have it vividly in mind,
22 the sentence it advocates and particularly why it
23 regards it as reasonable. And I have some -- the
24 written submission was very helpful. It's what I
25 usually get in a more familiar case and I certainly

1 wanted it in this case. But I actually have perhaps two
2 related points that haven't been addressed by anybody
3 and I'll raise them at the appropriate time.

4 Mr. Dowden.

5 MR. DOWDEN: Thank you, your Honor. At the
6 outset, I'd like to remind the Court that the
7 Government's recommendation includes a 6-month period of
8 incarceration, a 6-month period of home detention, a
9 3-year period of supervised release, during which time
10 she may not publicize or tell anyone the name of the
11 victim, as the Court has explained, the mandatory
12 restitution as required in the Crime Victims Rights Act,
13 which I understand the victim is assigning to the Crime
14 Victims Fund, and a \$200 special assessment. And the
15 Government is not seeking a fine in this case.

16 Your Honor, as the Government outlined in its
17 sentencing memo, the totality of the components of the
18 Government's sentence is reasonable. It is reasonable
19 because it is sufficient, but not greater than necessary
20 to effectuate the purposes of sentencing with respect to
21 this particular defendant and the offense in which she
22 engaged.

23 To be sure, as we mentioned in our memo, the
24 incarcerated period of time of this sentence is low. It
25 is low. And candidly the Court knows the Government

1 usually recommends sentences that are higher. But it
2 has in the past and will continue to argue, in some
3 cases, that there should be a variance. And the
4 Government believes the totality of the confinement
5 period in this case, that is, 12 months, 6 months
6 incarceration, 6 months home detention, when combined
7 with the extended period of supervised release, is
8 reasonable. And the Government has a number of
9 reasons.

10 The first is, the core of Ms. Robinson's conduct
11 is the extortion and threat here. And Congress -- the
12 extortion and threat to injure the reputation of this
13 victim.

14 THE COURT: Well, you say, in the indictment,
15 his business as well.

16 MR. DOWDEN: His business as well, your
17 Honor.

18 The Government did not charge Hobbs Act extortion
19 in this case. The government --

20 THE COURT: And, in fact, I studied with the
21 Probation Department whether that charge would have
22 enhanced the sentence, and the guidelines would have
23 been the same. But so I didn't raise the issue with you
24 why it wasn't a Hobbs Act extortion, because I think it
25 could have been.

1 MR. DOWDEN: Your Honor, besides the
2 Government's charging decision with respect to Hobbs Act
3 extortion, the Government believes that the charger did
4 choose, which specifically referenced the reputation of
5 this victim, is what goes to the core of his conduct.
6 And Congress has made a determination with respect to
7 that specific conduct that a two-year statutory maximum
8 is the appropriate sentence. Although the guidelines
9 may be higher, Congress has made a determination that 24
10 months is sufficient.

11 And I think the Court has to look at this conduct
12 along a continuum within that range. There is no threat
13 of violence here, although it was serious conduct, and
14 repeated conduct --

15 THE COURT: Well, you know, in blackmail,
16 usually there is no threat of violence. This -- well,
17 go ahead.

18 MR. DOWDEN: Yes.

19 THE COURT: But, I mean, this is blackmail.
20 This isn't, you know, "I'm going to break your leg if
21 you don't pay your debt," but it's threatening a kind of
22 pain that can be greater than a broken leg. Well, go
23 ahead.

24 MR. DOWDEN: The Government recognizes that,
25 your Honor. But the Government also believes that the

1 3-year period of supervised release in this sentence,
2 which is at the maximum of -- I'm sorry, your Honor.

3 THE COURT: Go ahead.

4 MR. DOWDEN: The 3-year period of supervised
5 release, when taken in connection with those other
6 components, makes this sentence reasonable. That is a
7 significant restriction.

8 THE COURT: Well, let me ask you this
9 something before you get to that, which is an argument I
10 think I understand.

11 But what you haven't addressed is the following
12 and that is, you know, what's the evidence of whether or
13 not Miss Robinson was the mastermind of this
14 extortionate scheme and where did the money go? Because
15 she got \$280,000 at the end of July, she was arrested
16 three years later, and she comes before me representing
17 that she's indigent. I know that there's been the --
18 there's been interest in the missing man here, but I'm
19 not sure that the most important missing man is the
20 victim.

21 There are men -- well, there's one man mentioned
22 in the presentence report as her pimp. It's ambiguous
23 as to whether he was the pimp until 2006 or remained the
24 pimp until August of 2008. That's the ambiguity that's
25 created by Paragraph 69 and 95, and not until I got your

1 financial statement at about 11:30 this morning did I
2 see that in the weeks after she got this money from the
3 victim, she gave substantial amounts to two other
4 males. And I think it's highly relevant to whether I'm
5 going to accept this sentence. So I want to put you
6 both on notice, so you can address it.

7 Either she still has this -- a meaningful amount
8 of that money, in which case, you know, she lied to get
9 a CJA counsel and this sentence is unreasonable, or she
10 was acting at least in concert with and arguably at the
11 direction of somebody else. And if she was acting at
12 the direct of somebody else, I think the Government has
13 got a responsibility to find out who else and prosecute
14 the more culpable person.

15 But this gives her, not a pass, but a diminished
16 role in the offense because an abused woman working as a
17 prostitute at the behest of a man, perhaps a pimp, um,
18 you know, might reasonably be regarded as less culpable
19 than somebody who's a free agent and cooking up this
20 scheme, executing this scheme on her own.

21 MR. DOWDEN: Yes, your Honor. And the
22 Government certainly factored that decision -- factored
23 it in in agreeing to this plea agreement.

24 THE COURT: Well, why didn't you tell me --

25 MR. DOWDEN: The defendant should not benefit,

1 clearly, from \$280,000 that was paid in this case. And
2 without commenting on ongoing investigative efforts, the
3 Government has an interest in making sure that there is
4 not an organized effort here and that there are no other
5 defendants here at this point. The Government is --

6 THE COURT: Well, is there an ongoing
7 investigation?

8 MR. DOWDEN: Your Honor, we normally don't
9 comment on that for several important reasons, important
10 reasons that individuals who might think that we may be
11 coming will wait for us. And so we don't wish to
12 comment on that at this point.

13 THE COURT: Well, I still have the question
14 that I asked you. Is it the Government's view that she
15 was the mastermind and, you know, intended sole
16 beneficiary of this scheme?

17 MR. DOWDEN: Your Honor, the evidence that's
18 been developed to date suggests that there was not a
19 coordinated effort between Miss Robinson and other
20 individuals to execute this scheme. The Government has
21 made efforts, frankly, to find the money in this case.

22 THE COURT: Did you go to the safe deposit
23 box?

24 MR. DOWDEN: Your Honor, there was a search
25 warrant that was executed on this safe deposit box

1 earlier in this year.

2 THE COURT: And -- I'm not going to mention
3 these names of these people for a combination of
4 reasons, but if you go to Paragraph 52 of the financial
5 statement you gave me this morning that's under seal?

6 MR. DOWDEN: Yes.

7 THE COURT: There's somebody that had been
8 identified, "apparent business," last name "unknown,"
9 who allegedly or reportedly got \$20,000?

10 MR. DOWDEN: Your Honor, frankly, without
11 commenting on personal and private information, the
12 Government understands what the purpose of that was. It
13 was an expense for Miss Robinson's personal benefit. It
14 was not another individual.

15 THE COURT: And what about on the next page,
16 the \$40,000?

17 MR. DOWDEN: Your Honor, the Government has
18 and continues to follow that lead.

19 THE COURT: Because -- and then if you go up
20 to 49, some of the money was said to have been spent on
21 a friend's Land Rover. Wasn't she in a Land Rover when
22 she was arrested?

23 MR. DOWDEN: Yes, your Honor, she was.

24 THE COURT: And so this is \$13,000 for custom
25 rims on two cars, a BMW and a Land Rover. My children

1 would tell me she was pimping their wheels, my law
2 clerks tell me that. Do you know who the friend is?

3 MR. DOWDEN: Your Honor, we're in the process
4 of identifying the registration for that vehicle and the
5 owners of that vehicle, yes.

6 THE COURT: Well, if she was contrite, she
7 could voluntarily tell you who the friend is and if
8 she's not contrite, you could stick her in the grand
9 jury you can ask her when she's sentenced. These things
10 are ascertainable.

11 Because to me, this really goes to the
12 reasonableness of the sentence. If, you know, if she's
13 a person who was abused from childhood and now is on the
14 -- under the influence of some men who are taking
15 advantage of her, you know, that might cause the agreed-
16 upon sentence to be reasonable or reinforce the
17 reasonableness. You know, on the other hand, if she
18 cooked up this scheme on her own and enthusiastically
19 executed it, maybe the sentence is not enough. And, you
20 know, you say you thought about it, but there's no
21 mention of this in the submissions made.

22 MR. DOWDEN: Because of the personal nature of
23 some of these issues, the fact that some of these items
24 that are listed in the financial statement were for her
25 personal benefit, the fact that also some of these

1 items, quite frankly, there is evidence to suggest were
2 frankly stolen from her.

3 Your Honor, would you like me to continue or --

4 THE COURT: Okay. Go ahead.

5 MR. DOWDEN: Your Honor, I will not go on at
6 great length because I believe Mr. Stern has gone on at
7 great length about the victim consideration in this
8 case, and we said in our memo, that is not indeed
9 significant, impacting significant consideration for the
10 Government's calculation. The Government has statutory
11 obligations in this matter to respect the dignity, the
12 privacy of the victim as well as to prevent further harm
13 to that victim from the defendant. That goes to the
14 heart of the restriction that has been placed on her on
15 supervised release.

16 Your Honor, referring to deterrence, the
17 government takes that message very, very seriously. And
18 as we outlined in our memo, the general deterrence of
19 this message in this sentence is very important.
20 Extortion preys on fear and preys on fear for
21 individuals, fear for their families, and in too many
22 cases victims succumb to that fear, pay that money, or,
23 in fact, go to self-help and the Government does not
24 want to promote that. And it's sending a message that
25 the Government takes extortion seriously, takes the

1 victim's rights not to have the very fear that was
2 supposed to be caused on them come to fruition, very
3 seriously. Thank you.

4 THE COURT: Well, I just want to make sure
5 that I'm clear. I asked you whether you thought she was
6 acting alone and was the mastermind of this scheme or
7 whether, I mean, there's an escort service whose name
8 you have. It's in here. Do you know who the escort
9 service is?

10 MR. DOWDEN: Your Honor --

11 THE COURT: I'm not asking you to tell me.
12 I'm just asking you if you know?

13 MR. DOWDEN: Your Honor, there does not
14 appear, based on what we know today, that the escort
15 service was significantly involved in the execution of
16 this scheme. There may have been another individual who
17 was involved in this scheme. And that, without
18 commenting any further, is subject to inquiry.

19 THE COURT: "May have been." Well, Miss
20 Robinson knows.

21 And just to make sure I've got this clearly in
22 mind, I think -- it's not part of the sentence, but the
23 ancillary order or the agreement of the Government is
24 going to require that the U.S. Attorney's Office collect
25 in writing the names of everyone who -- employed by the

1 Government who knows the victim's identity.

2 Mr. Levenson can hold that for the Government. I'll
3 issue an order that everybody on that list use -- you
4 know, to maintain the confidentiality of it and only use
5 it in connection with his or her responsibilities in
6 this case or any investigation arising out of this
7 case. And hopefully I'll never have to look at that
8 list if I impose the sentence. Okay?

9 MR. DOWDEN: Your Honor, just two other
10 points. Just the mechanics of that, your Honor, and
11 I'll let my colleague address that in more detail.

12 THE COURT: We'll deal with that later. If I
13 issue an order and you want it refined in some way, you
14 can ask me and I'll seriously consider it.

15 MR. DOWDEN: To the extent that there are
16 individuals associated with the defendant, that would be
17 separately filed with the Court, their submission, I
18 understand, your Honor?

19 THE COURT: I guess I'll take that up with
20 Mr. Smith, whether he'll hold it or file it with me. I
21 might just rely on him to hold it.

22 All right. Mr. Smith, what you filed this morning
23 was helpful, too, but you now know I -- as I say, I
24 think the -- I don't know whether there's a missing
25 person here that would give me a more accurate

1 perspective whether -- well, of your client's role in
2 the offense and whether this sentence is reasonable.

3 MR. SMITH: Well, I'll address it. I believe
4 the sentence is reasonable, your Honor, and we agree
5 with the Government that the guidelines don't really
6 fully address my client's individual situation, that a
7 variance is appropriate, and a sufficient sentence is
8 what's been recommended by the parties.

9 And obviously if we turn to the 3553A factors,
10 which we've outlined in our brief, we start with my
11 client's background, which you're now familiar with,
12 with the PSR, as a child. She was raised by parents
13 that both battled substance abuse problems and she faced
14 significant physical abuse in the home. As a result,
15 twice in her young childhood she was removed from the
16 home by state authorities. She returned to the home as
17 a child only then to endure homelessness with her
18 family. And as a result she suffered from dire
19 financial and economic circumstances resulting in her
20 turning to prostitution as a teenager. And as it was
21 found out through the PSR, she disclosed to the
22 Probation Officer, that at 15 was her first exposure and
23 experience in that.

24 THE COURT: Could you take the microphone and
25 speak into it, please.

1 MR. SMITH: Yes, your Honor.

2 (Gets microphone.)

3 MR. SMITH: As I was saying, at 15, my client,
4 she ran away from home, she did enter into the world of
5 prostitution for a period of her time. She was able to
6 extricate herself only to find herself at the age of 20
7 as a single mother with a young child whose husband was
8 gone. And, again, then, at that point in time, she
9 turned back to prostitution, which has been,
10 unfortunately, really a terrible concept as a result of
11 the dire circumstances that she found herself growing up
12 in.

13 Obviously she engaged in illegal conduct.
14 Obviously she had to support her child. She did the
15 best she possibly could, your Honor. And until the
16 circumstance leading up to this arrest, she had not been
17 convicted of a crime and she had not been incarcerated.
18 And she hadn't served any time until about the 13th of
19 August when she was arrested.

20 And I think, your Honor, to address the deterrent
21 effect, um, we did some research to look into for the
22 Court to see if there are similar cases and we found
23 none in Massachusetts. And my client, should the Court
24 impose this sentence, will have spent one year in
25 incarceration, essentially. She'll have lost her home,

1 she'll have lost custody of her daughter, which is now
2 in temporary custody of a relative. She's lost
3 everything she's owned. And the equivalent of economic
4 capital punishment comes to mind when you realize, yes,
5 she is a young mother, she was struggling, she made a
6 mistake, she acknowledged her mistake, she came forward
7 and filled out a financial --

8 THE COURT: She didn't just quite make a
9 mistake, she committed a very serious crime. I mean,
10 extortion has long been regarded as a serious crime.
11 Not every prostitute resorts to extortion.

12 MR. SMITH: We agree with the Court on that,
13 this is a very serious crime, your Honor, and she
14 acknowledged and accepted the responsibility, and she's
15 lost virtually everything she's had. She didn't have
16 much, but she's lost virtually everything she's had as a
17 result of her acceptance of the responsibility.

18 Clearly she stands as a deterrent effect on
19 anybody else who might consider this kind of conduct.
20 Clearly she's been punished by serving a year in jail,
21 having three years of supervised release, where she's
22 going to have to report and live by all the rules
23 imposed by the court.

24 Also, there's a rehabilitative possibility by
25 following the rules laid down by the Probation Officer

1 in supervised release, there's a possibility she could
2 obtain some kind of occupational training and be
3 rehabilitated, your Honor. She's only 27 years old.
4 She has a very young child.

5 I mean, for all these reasons, that the sentence
6 imposed by the Court is sufficient but not greater than
7 necessary.

8 THE COURT: Well, I guess I have a series of
9 related questions. As I said, if you look at the
10 presentence report, there's an ambiguity. Take a look
11 at Paragraph 69 and 95. 69 suggests that she hadn't
12 identified the person as a pimp until 2006 and --

13 MR. SMITH: Your Honor, could we approach for
14 a moment on that particular point?

15 THE COURT: We can. And, in fact, you know,
16 if there's anything I should be told in the lobby or at
17 the side bar, that's fine. You know, some of this could
18 affect an ongoing investigation, if there is one, some
19 of this could affect his privacy interests, but it's
20 also related to the decision I need to make and it
21 shouldn't be discussed in open court. So we'll have a
22 brief closure of the court. But I'll see you at side
23 bar.

24

25

1 (In open court.)

2 THE COURT: All right. Mr. Smith, let me do
3 the following. If I accept this plea agreement, am I
4 correct in understanding that it's consistent with the
5 plea agreement to make the home detention on electronic
6 monitoring?

7 MR. SMITH: Yes, it is, your Honor.

8 THE COURT: And it will probably take at least
9 a day and maybe a little more to set that up, if there's
10 an operative telephone at the location that you propose
11 she reside. Do you know whether there is yet an
12 operative telephone?

13 MR. SMITH: There is. I have the phone number
14 right here, your Honor.

15 THE COURT: Well, you'll give it to Probation
16 if I accept the sentence, but it would require the
17 preparation of a judgment. As a practical matter, Miss
18 Robinson wouldn't get out until next week and until that
19 place, that phone can be dealt with. Is that consistent
20 with the agreement? Because I can also continue the
21 sentencing.

22 MR. SMITH: No, I think we would be willing to
23 agree to whatever the Court -- if the Court were going
24 to impose a sentence, we would agree to those
25 conditions, your Honor.

1 THE COURT: Well, is there any more that you
2 would like to say?

3 MR. SMITH: No, your Honor. Thank you for
4 your courtesy. And I would like to thank Probation for
5 promptly completing the PSR in a way that could expedite
6 the sentencing proceeding today.

7 THE COURT: They worked very hard and did very
8 well.

9 Miss Robinson, you know have an opportunity, but
10 not an obligation to speak before I decide whether to
11 accept this sentence, and I haven't decided yet. But
12 that means you don't have to say anything, if you don't
13 want to, but if there's something you would like to say,
14 for me to consider, now is the time.

15 THE DEFENDANT: Um, I just want to apologize
16 to the Court and to the victim, that I feel really
17 horrible.

18 THE COURT: I'm sorry. I can't hear you.

19 THE DEFENDANT: I just want to apologize to
20 the Court and to the victim. I feel really horrible and
21 I'm really sorry for what I did. And I have no
22 intentions of discussing this case with anybody.

23 THE COURT: Okay. You may be seated.

24 I'm going to take about a 10-minute break and then
25 I will return and tell you whether I'm accepting the

1 plea agreement. The Court is in recess.

2 (Recess 4:20 p.m.)

3 (Resume 4:35 p.m.)

4 THE COURT: Having had the opportunity to
5 consider this matter intensely and carefully and for the
6 reasons I'll describe, I do hereby accept the binding
7 plea agreement. Count 1 of the indictment in the
8 information is therefore dismissed.

9 I find that the agreed sentence is reasonable. It
10 is the result of arm's length negotiation by capable,
11 experienced counsel. It is within the range of reason
12 when all of the Section 3553A and B factors are
13 considered.

14 I think even before **Booker**, this could have
15 properly been viewed as a justified departure. The
16 agreed-upon sentence requires that Miss Robinson spend a
17 year in custody, 6 months in jail, already served, and 6
18 months in home confinement. The sentencing guideline
19 expressly recognizes that in certain circumstances a day
20 in home confinement can be properly exchanged for a day
21 in jail or prison.

22 This sentence, agreed upon by the parties, is 15
23 months below the bottom of the Advisory Guideline range,
24 however, this case is not in the heartland of cases
25 considered by the Sentencing Commission in developing

1 the guidelines. Consideration of the Section 3553A
2 factors, as I'll explain, persuades me that this
3 sentence is sufficient and no more than necessary to
4 serve the statutory goals of sentencing.

5 I have, as required by the statute, considered the
6 nature and circumstances of the offense. It shouldn't
7 be lost that extortion is a very serious crime, a crime
8 that would ordinarily be properly punished by a
9 considerably higher sentence than the sentence imposed
10 today. However -- although nobody, particularly Miss
11 Robinson, wants to say so, I infer that she was not a
12 totally free agent in this matter.

13 She has a history of being an abused woman. She
14 first became a prostitute when she was 15. She is a
15 person with a history of being taken advantage of by men
16 who profited from her prostitution. I infer that she's
17 not the only person morally culpable in this case, in
18 this crime, and perhaps, although further investigation
19 will be necessary to say with certainty, she's less
20 culpable than others who -- or at least one other,
21 involved in the extortion. I'm not talking about the
22 victim, I'm talking about one or more other individuals.

23 As required by Section 3553A, I've considered
24 Ms. Robinson's characteristics. As I said, she had a
25 difficult life. She's been abused. She's been

1 homeless. But she's also made a number of efforts to
2 get an education. And she's lost the custody of her
3 daughter as a result of this. She tried to go to
4 college and the fact that her boyfriend was storing
5 marijuana in her dorm room got her thrown out of
6 college. It seems to be part of a pattern.

7 I find that the one year in custody adequately
8 reflects the seriousness of the offense. It should send
9 the message to Miss Robinson to stop committing crimes,
10 including prostitution. If you engage in prostitution,
11 it's a violation of state law, it's a violation of your
12 conditions of supervised release, you can be locked up
13 again for 3 years, in this case, if you return to
14 prostitution. But you should particularly avoid even
15 more serious crimes like extortion. You're going to get
16 caught, you're going to get convicted, and you're going
17 to get even more seriously punished.

18 I also think that this sentence, which involves a
19 year in custody, should send the message to others that
20 they should resist any temptation to extort money.

21 The Crime Victims Reform Act, as I said earlier,
22 is a relatively recently enacted statute. It requires
23 that victims' dignity and privacy be respected. The
24 plea agreement that I've accepted eliminates the need
25 for a trial that would have inevitably disclosed the

1 identity of the victim of the extortion. That
2 disclosure is precisely the harm that Miss Robinson was
3 threatening to inflict on the victim.

4 In hiring a prostitute, which itself was illegal,
5 the victim assumed the risk that he might be caught in
6 an investigation of prostitution and his illegal conduct
7 might have been lawfully disclosed by law enforcement.
8 However, engaging a prostitute or by engaging a
9 prostitute, he didn't authorize or justify the extortion
10 that occurred here.

11 While that business person created his own
12 vulnerability, he is nevertheless a victim and he has a
13 right recognized by that statute, the Crime Victims
14 Rights Act, to have his privacy interest given weight in
15 this case.

16 As the Government argues, the sentence I will be
17 imposing punishes the defendant while maintaining the
18 confidentiality of the victim and therefore should have
19 the effect of deterring extortion by prostitutes and
20 others and if necessary promote the likelihood that
21 they'll be caught and convicted by encouraging other
22 victims to inform law enforcement when extortion has
23 occurred. This is in the public interest.

24 The sentence will also give the defendant a chance
25 for a healthier and safer life. When you get out, you

1 won't be alone. The Probation Department will be your
2 partner. They will help you get treatment for any
3 mental health or drug addiction problems you may have.
4 They will help you get an education, which at various
5 times, you've tried to get. They'll help you find a
6 job. They'll help you find a way to live a life where
7 you don't have to work as a prostitute.

8 And if you're in danger from anybody else, you
9 should tell your Probation Officer and your lawyer and
10 they'll help protect you from that danger. You can get
11 restraining orders, you can get anybody who is menacing
12 to you illegally prosecuted.

13 I find that the sentence agreed upon and being
14 imposed will not cause unwarranted disparity. As I
15 said, Miss Robinson's case is not in the heartland of
16 wire frauds or extortions. It doesn't fit the paradigm
17 the Sentencing Commission had in mind when it generated
18 the guidelines. It is a different sentence, but it's a
19 justified different sentence than the guidelines
20 contemplated.

21 So I find that one year in custody and the
22 requirement that Miss Robinson, while on supervised
23 release, not disclose the name of the victim to anybody,
24 constitutes a reasonable sentence and I will impose it.

25 But as I'll explain, if she violates any of the

1 conditions of her supervised release, including by
2 disclosing the identity of the victim in this case, she
3 should expect to be brought back in front of me, have
4 her supervised release revoked, be locked up for up to 3
5 years, and then be placed on supervised release again,
6 where if she violates any of the conditions, she's going
7 to be locked up for that full period of supervised
8 release, too.

9 Miss Robinson, please stand.

10 (Defendant stands.)

11 THE COURT: In connection with the two counts
12 to which you've plead guilty, I hereby sentence you to
13 time served, plus 5 days, which is consistent -- which
14 means you're going to be released next Wednesday and
15 possibly sooner. But it's essential that Probation
16 determine that you have a suitable place to live and
17 that the electronic monitoring be set up.

18 So basically, to articulate it this way, I'm
19 accepting the binding plea agreement, effective February
20 25, 2009, because by that time I will have signed a
21 judgment that will permit the Federal officials to
22 release you and you'll have in writing what you have to
23 do.

24 I'm imposing a term of 3 years supervised release,
25 the first 6 months on electronic in-home detention on

1 electronic monitoring. That means you'll be allowed to
2 leave only when Probation permits it. And if it turns
3 out that you obey the conditions and you're in school or
4 have other responsibilities, Probation can come back to
5 me and ask me to take the electronic monitor off. But
6 basically you're only going to be able to go out when
7 Probation permits you to go out on those 6 months.
8 You're to be home, except when authorized by Probation,
9 or for a true medical emergency.

10 As a condition of your supervised release, you may
11 not disclose the name of the victim in this case to
12 anybody except your attorney and those working with them
13 in connection with this case. They may use that
14 information solely for the purpose of this case.

15 I'm ordering that by February 25th, Mr. Smith get
16 from you the name -- in writing, the name of every
17 person, to your knowledge, who knows the name of the
18 victim in this case. And he's to file an affidavit
19 stating that he has that list and that he'll keep it
20 until at least your supervised release has ended.

21 Your supervised release is also on the following
22 conditions. There are standard conditions. You can't
23 commit another Federal, state or local crime. You may
24 not unlawfully use a controlled substance, that is, a
25 controlled substance without a prescription. You can be

1 tested up to 104 times a year to see if you're using
2 drugs. You shall participate in any mental health or
3 drug treatment program prescribed by Probation. And if
4 you have the money or insurance, you have to pay or
5 contribute to the cost of that. You have to submit to
6 the collection of a DNA sample. You may not possess a
7 firearm or other dangerous weapon.

8 I'm not imposing a fine because there's no fine
9 cited for in the plea agreement. However, there is a
10 mandatory \$200 special assessment. As far as I know,
11 the forfeiture prescribed by Paragraph 9 of the plea
12 agreement is in effect, it's part of the sentence, and
13 you have to forfeit the property as stated in the plea
14 agreement. So if you have any more of that money that
15 you extorted, it has to be returned.

16 To some extent I've already explained the -- I'm
17 sorry. There's restitution of \$280,000 that shall be
18 made to the Crime Victims Fund pursuant to 18 United
19 States Code, Section 3664G(2), because the victim has
20 waived his right to get his money back. And under your
21 plea agreement, since I've imposed the agreed-upon
22 sentence, you have waived your rights to appeal or
23 collaterally challenge this decision, except if there's
24 some favorable decisions to you which have retroactive
25 effect.

1 Essentially the reasons for this sentence, as I
2 said, were described earlier, but they're as follows.
3 What shouldn't be lost here is you committed a very
4 serious crime and it could have resulted in your going
5 to prison for years. A sentence has to be imposed to,
6 in effect, teach you a lesson and it has to be
7 sufficient to try to teach other people who might be
8 tempted to extort money from people who put themselves
9 into jeopardy of being extorted from doing that. But
10 the sentence also recognizes that you're still a
11 relatively young person, that you had hardship in your
12 life, that there have been times when people have taken
13 advantage of you, and this may be one of them, and that
14 there's hope for you, if you take advantage of this
15 opportunity.

16 Right now you probably feel that this case has
17 been a really miserable experience and I'm sure that it
18 has. I expect that losing custody of your child has
19 been painful, among other things. But if you're -- if
20 you've learned anything from all of this, this case
21 could turn out to be the best thing that ever happened
22 to you, because you were living a miserable life. You
23 were going to get into trouble, if you didn't get
24 killed, or seriously hurt, the way you were going.

25 And as I said earlier, I was struck when I read

1 the presentence report and saw all of the efforts that
2 you had initiated at various times to get an education,
3 because I know a lot of people with your background
4 don't do that or can't do that. But if that's still of
5 interest to you, this case is going to have broken your
6 connection with that miserable past, given you a partner
7 in the Probation Department that will help you get on a
8 path towards a lawful, productive, happier future. It's
9 ultimately up to you.

10 You don't want to see me again, because if you're
11 back here, you're probably just stopping in the
12 courthouse on your way to prison for 3 years. It's very
13 important to you that the victim's name not get out,
14 that you not use drugs, that you not do anything that
15 would be a violation of your conditions of supervised
16 release. If you succeed in doing all that and you take
17 advantage of the partners you have in the Probation
18 Department, your future is going to be a lot happier
19 than your past. But ultimately that's up to you. You
20 may be seated.

21 (Defendant is seated.)

22 THE COURT: This isn't part of the sentence,
23 but I think we believe we've agreed it's appropriate and
24 at the beginning of next week I'll issue something in
25 writing on this, but I am ordering the Government to

1 collect, in writing, the names of everybody employed in
2 the United States Attorney's Office, the FBI, and if
3 there's anybody else in any other office or agency, who
4 knows the victim's identity. I'm ordering that
5 Mr. Levenson, or his successor, maintain that list. I'm
6 ordering that the victim's identity be used by those
7 employees of the Government who have a need to know it
8 only for the purposes of this case or any investigation
9 or prosecution arising out of this case.

10 It may be that additional people will have a
11 legitimate need to know the victim's identity, but those
12 people will have to go on Mr. Levenson's list and will
13 have to understand that they're subject to this order.
14 I may issue a form that they can sign saying that
15 they've read the order and they understand that if they
16 violate it, they can be subject to criminal contempt.
17 That the Government has made serious and apparently,
18 thus far, successful efforts to meet its
19 responsibilities under the Victim Rights Act and it's
20 just very important that that effort and that success
21 continue.

22 As I said, Count 1 is dismissed and the
23 information is also dismissed.

24 Is there anything further in this matter for
25 today?

1 MR. DOWDEN: Nothing from the Government, your
2 Honor.

3 MR. SMITH: I would just ask if our side bar
4 conference could be sealed, your Honor?

5 THE COURT: Yes. If the transcript is
6 prepared, the side bar conference, pursuant to standard
7 procedures, will be transcribed separately and placed
8 under seal.

9 MR. SMITH: Thank you. And the other inquiry
10 we had, your Honor, is if my client were allowed to
11 regain custody of her daughter during the time of home
12 confinement, there wouldn't be any prohibition from the
13 Court of the daughter living with her at the apartment?

14 THE COURT: No, there's no prohibition and --
15 and this is just going to have to be worked out with
16 Probation. If she's a single person living alone, she
17 can go out with the authorization of Probation. If
18 she's got a chance to look for education or employment,
19 I want her to do it, I don't want her to sit there for 6
20 months and then start doing it. If she gets her
21 daughter and the requirements of taking care of her
22 daughter make the electronic monitoring not feasible, if
23 she's performed well on the electronic monitoring,
24 Probation can come back to me and ask me to take her off
25 the electronic monitoring. The proverbial ball is in

1 her court.

2 MR. SMITH: Thank you. We have nothing
3 further, your Honor.

4 PROBATION OFFICER: Excuse me, your Honor.
5 There are other -- some suggested special conditions in
6 our recommendation dealing with the collection of the
7 restitution payments.

8 THE COURT: Okay, actually, that's a good
9 point. I thought because there was no fine, those
10 weren't necessary, but I appreciate you bringing those
11 to my attention.

12 The restitution is to be paid on a schedule that
13 the Court will order even though there's no fine.
14 Probation will propose a schedule after they talk to
15 you. As long as you owe any amount of restitution, you
16 may not incur any new credit charges or open any
17 additional lines of credit without the approval of the
18 Probation Office. You must provide the Probation Office
19 access to any requested financial information, which it
20 may share with the U.S. Attorney's Office.

21 And I think that's it?

22 PROBATION OFFICER: That's all, your Honor.

23 THE COURT: All right. You all did a highly
24 professional job. It facilitates the administration of
25 justice when you do that.

1 The Court is in recess.

2 (Ends, 5:05 p.m.)

3

4 C E R T I F I C A T E

5

6 I, RICHARD H. ROMANOW, OFFICIAL COURT REPORTER, do
7 hereby certify that the foregoing record is a true and
8 accurate transcription of my stenographic notes on
Friday, February 20, 2009, before Chief Judge Mark L.
Wolf, to the best of my skill and ability.

9

10

11 /s/ Richard H. Romanow

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RICHARD H. ROMANOW

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